

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 99-0306
Retail Sales Tax, Withholding Tax, Food & Beverage Tax
For The Tax Periods: 1997, 1998**

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ISSUES

I. **Retail Sales Tax, Withholding Tax, Food & Beverage Tax – Responsible Officer Liability**

Authority: IC 6-2.5-9-3, IC 6-3-4-8, IC 6-9-12-7, IC 6-8.1-5-1, *Department of Revenue v. Safayan*, 654 N.E.2d 270, 273 (Ind. 1995).

The Taxpayer disputes the determination that he had a duty to remit the corporation's sales tax, withholding tax, and food and beverage tax.

STATEMENT OF FACTS

An Indiana corporation incurred liabilities for failure to remit sales, withholding, and food & beverage taxes. Taxpayer is listed as President on the corporation's Indiana Business Tax Application (Form BT-1). A letter was sent on February 11, 2000, attempting to establish a hearing date. A second letter was sent on April 11, 2000 setting the hearing for May 9, 2000 at 10:00 AM. The Taxpayer did not respond to any of the letters and failed to appear for the hearing. More facts will be provided as necessary.

I. **Retail Sales Tax, Withholding Tax, Food & Beverage Tax – Responsible Officer Liability**

DISCUSSION

The sales tax liabilities were issued under authority of IC 6-2.5-9-3, which provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department; holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

In addition, IC 6-9-12-7 provides that “food and beverage tax shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-25.” Furthermore, withholding taxes were assessed against the Taxpayer pursuant to IC 6-3-4-8(f), which provides that “[i]n the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

Also, IC 6-8.1-5-1 specifically provides that notice of a proposed assessment is *prima facie* evidence that the Department’s claim for the unpaid tax is valid. It is the burden of the taxpayer to prove that the proposed assessment is wrong. Here, Taxpayer has provided the Department with no additional evidence.

In *Department of Revenue v. Safayan*, 654 N.E.2d 270, 273 (Ind. 1995), the court stated “where the individual was a high ranking officer, we presume that he or she had sufficient control over the company’s finances to give rise to a duty to remit the trust taxes.” Here, the Taxpayer is listed on the BT-1 under the title of president.

From these facts, the Department must conclude that Taxpayer was properly named a responsible officer. Therefore, pursuant to IC 6-2.5-9-3, IC 6-9-12-7, and IC 6-3-4-8, Taxpayer had a duty to remit the sales, withholding, and food and beverage tax to the Department.

FINDING

The Taxpayer’s protest is denied.